GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Sri Kothaplli Vivekananda Kumar S/o Kothappli Jacob, R/o Thimmapuram Village, Addateegala Mandal, East Godavari District under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (A.P. Act No.16/1993) against the proceedings Ref.C5(M)/160/2014, dated.05.03.2016 of the District Collector, erstwhile East Godavari in cancelling his "ST-VALMIKI" caste certificate – Appeal Petition dismissed - Orders - Issued.

TRIBAL WELFARE (CV) DEPARTMENT

G.O.Ms.No.08 Dated: 23.01.2024

Read the following:-

1. Proceedings of the District Collector, East Godavari, Lr.No.Ref.C5 (M)/160/2014, dated 05.03.2016.
2. Appeal Petition filed by Sri Kothapalli Vivekananda Kumar S/o Kothapalli Jacob, R/o Thimmapuram Village, Addateegala Mandal, East Godavari District, dated 21.03.2016.
3. Govt. Memo No.202553/CV.2/2016, T.W(CV.2) Department, dated 31.03.2016 & 26.042016.
4. From the Dist. Collector, East Godavari District, Lr.No.Ref.C5(M)/160/2014, dated 24.05.2016.
5. Petition filed by Sri P. VenkataRamana, Secretary, AP ST Employees Association, before the M(SWE&TWE) on dated 14.05.2016.
6. Govt. Memo No.202553/CV.2/2016, dated 05.12.2016.
7. Govt. Memo No.202553/CV.2/2016, dated 18.08.2017, 20.03.2018, 30.04.2018, 04.07.2018, 07.08.2018, 17.09.2018, 22.10.2018, 06.11.2018, 27.12.2018, 09.01.2019 , 23.01.2019 & 09.10.2019, 24.02.2023.
8. Written arguments filed by the appellant on 07.03.2023.

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ORDER:

In the Proceedings 1st read above, the Collector & District Magistrate, erstwhile East Godavari had issued orders cancelling the "ST–Valmiki" community certificate of Sri Kothaplli Vivekananda Kumar S/o Kothappli Jacob, R/o Thimmapuram Village, Addateegala Mandal, East Godavari District, obtained from the then Tahsildar, Addateegala.

2. In the reference 2nd read above,. Sri Kothaplli Vivekananda Kumar S/o Kothappli Jacob, has filed Appeal Petition before the Government against the Proceedings of the District Collector, East Godavari. After examining the said Appeal Petition, Government have admitted the same and Para-wise remarks on the grounds filed by the Appellant along with connected records were called for from the District Collector, East Godavari vide Govt. Memo 3rd read above.

3. In the letter 4th read above, the Collector & District Magistrate, erstwhile East Godavari District has furnished the para-wise remarks on the Appeal Petition filed by Sri Kothaplli Vivekananda Kumar S/o Kothappli Jacob,

4. The said Appeal Petition has been posted for hearing before the Hon'ble Appellate Authority on several dates and finally on 07.03.2023 duly informing the same to the Appellant and the Counsel for the Appellant vide reference 7th read above. During the course of the hearing and on perusal of the records/ the copies of evidences/ academic record/ grounds and written arguments filed by the Appellant/ Para-wise remarks submitted by the District Collector, East Godavari and proceedings of the District Collector, East Godavari, dated 05.03.2016, the Appellate authority has observed that;

I. The present appeal is filed by the Appellant/Sri Kothapalli Vivekananda Kumar S/o Kothapaill Jacob, R/o Thimmapuram Village, Addateegala Mandal, against the orders passed in vide reference C5 (M)/160/2014, dated 05-03-2016 by the District Collector, East Godavari District, Kakinada cancelling the community certificate dated 27.08.1985 issued by M.R.O., Addateegala, to him as ST-Valmiki.

[Contd..on P.2]

II. The Appellant claims that he belongs to Scheduled Tribe (ST)-Valmiki community, and that he originally hailed from the agency area of Visakhapatnam District prior to 1900 year, and that the authorities cancelled his caste certificate merely basing on a few birth entries, though there is a discrepancy in relation to his age and of his great-grand father Kothapalli Appalaswamy and his children Kothapalli Nagamma and Kothapalli Martin Luther and the Gram Sabha meeting confirmed that the people with Kothapalli surname are belonging to Valmiki ST, and that the marriage by his father with a nontribal woman, and professing the Christianity religion would not affect his community status as ST as per the guidelines issued by Ministry of Home Affairs (MoHA) GoI in O.M.No.13/3/71, Est.(SCT), dated 10.9.1971 and that further the earlier Joint Collector, East Godavari, Kakinada issued the circular instructions to all the Tahsildars instructing to issue Valmiki ST Community Certificates to the persons whose ancestors living in Agency area prior to 1956 and whose caste status is established as Valmiki in the local enquiries, even though the caste of a few members of his family were recorded as they are belonging to other castes".

III. The case of the Appellant further is that the orders passed by the Special Deputy Collector, Tribal Welfare, Rampachodavaram in a case in LTRP No.55/1990 dated 16.03.1991 and an order passed in an Appeal in CMA No. 62/1991 by the District Collector on 19.10.1993 show that his near relative Smt. Kothapalli Appayamma as ST-Valmiki and his parents used to take him and his sister Kothapalli Geetha to i.e.Thimmapuram (v) of Addateegala (M) in holidays to participate in tribal festivals and functions, and the caste of his paternal uncle Sri Kothapalli Apparao, was described as Valmiki in a School Certificate which is prior to 1956 and that the District Valmiki Sangham also declared him as Valmiki (ST) and that his sister Kothapalli Geetha @ Gladys caste was declared by the District Collector, East Godavari District, Kakinada as Valmiki ST and finally requested to cancel the orders passed by the District Collector.

IV. The District Collector furnished parawise remarks denying the averments made in the Appeal by the Appellant and stated that the impugned order passed is as per the law.

V. Now the only question falls for consideration is whether the impugned order passed by the District Collector cancelling the community status of the appellant as ST- Valmiki is liable to be set-aside?

VI. An enquiry in the case was initiated by the District Collector at the instance of a letter addressed by the United India Insurance Company Limited. Chennai vide No. HO/SCST/25/2010, Dated 27th September, 2010, informing that the Appellant here in is presently working as Assistant Manager, and he was earlier appointed as Development Officer during 1990 against the vacancy reserved for ST Category, that he produced Community Certificate dated 27.08.1985 issued by the then M.R.O., Addateegala, that subsequently it was cancelled vide proceedings dated 30.10.1993 of the Joint Collector(JC), East Godavari District, Kakinada and that the appellant secured a direction to the JC, from the High Court in Writ Petition No.18256/93 on 22.7.2008 for fresh enquiry into the matter.

VII. The District Collector after receiving the enquiry reports from the Tahsidlar in vide Ref: C/193/2012, Dated 26.07.2013, and the Sub Collector, Rampachodavaram, vide Ref: G/927 /2008, Dated 24.10.2013 and after perusal of them, had referred the case to the District Level Scrutiny Committee (DLSC) which was constituted under the provisions of Act, 1993 and the rules made there under in 1997 for a detailed enquiry.

VIII. The record shows that the DLSC conducted a detailed enquiry in to the claim of the appellant and the appellant herein also attended the enquiry and finally it resolved and recommended to the Collector and District Magistrate, East Godavari District, Kakinada to cancel the Valmiki Caste Certificate(s) issued to the Appellant here in and his family members by the then Mandal Revenue Officer, Addateegala/ Tahsildar, Addateegala during the year 1985, prior to 1985 and also subsequent to 1985 under the provisions of A.P, (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules 1997.

[Contd..on P.3]

IX. The copy of the findings of the DLSC was served on 11.11.2014. and the appellant attended the enquiry before the District Collector and also filed his written objections to the findings of the DLSC. After hearing the matter, the District Collector declared that Kothapalli Vivekananda Kumar /Appellant S/o Jacob, herein belongs to Mala Christian Community - Backward Class -C, but he is not Valmiki ST, exercising his powers conferred U/s 5 (1) of the Act 16/93 of A.P. (SCs, STs and BCs) regulation of issue of community nativity and date of birth certificate rules 1997 read with G.O.Ms. No. 58 SW (J) Department dt.12.5.1997.

X. Records show that the authorities provided an ample opportunity to substantiate the claim of the Appellant as ST-Valmiki in the case. Therefore there is no deviation of the legal procedure contemplated under the provisions of the Act 16 of 1993 and the Rules 1997 made there under in relation to giving an opportunity and following the principles of natural justice.

XI. A per the reports, the appellant deposed that he was a resident of agency area, but residing presently in Rajahmundry and that his grandfather Sri Kothapalli Appalaswamy possessed landed properties in agency area, and that originally they hailed from the agency area of Visakhapatnam District prior to 1900, and by submitting the genealogical tree of his family he claimed that their family belonging to Valmiki (ST), but he did not produce any school record during the enquiry and submitted that the caste of his children is noted as "Valmiki" in the School records on the basis of his Caste Certificate issued. Hence it is admitted fact that the entries in respect of his children were made in school records on the basis of caste certificates secured by him as ST-Valmiki.

XII. There is clinching evidence on the record which is against his claim as ST-Valmiki. Which are (1) Entry of the birth of Kothapalli Nagamma son of Appalaswamy in birth register in 1935 recorded as "Mala" 2) Entry of the birth of Kothapalli Martin Luther, son of Appala swamy, in 1935, recorded as "christian" (3) Entry of the birth of Kothapalli Appalaswamy S/o.Virakayiya, in 1940 recorded as "Mala",(4), the registered land deed submitted by the appellant, bearing No.99/1926, dated 23.2.1926 of Sub Registrar's Office, Prathipaduwhere in caste of Sri Kothapalli Appalaswamy, the great-grand father of the appellant as "Adi-Andhra". The Entry (5) against the name Sri Kothapalli Venkataswamy son of Yereakayya (patemal uncle of Kothapalli Jacob, who is the father of the appellant, was recorded as "Mala" in the death register. The Entry (6) of death of Kothapalli Nagaiah S/o. Appalaswamy (paternal Grandfather of K. Jacob) was recorded in 45 as "Mala. As per the evidence on the record, the wife of Sri K. Jacob belongs to Indian Christian (OC)and from Amalapuram(non agency area). Further the caste of Sri K. Jacob was described as Indian Christian in the annual list of Establishment of Revenue Department in East Godavari District in 1952.

XIII. The Hon'ble SC in Anand Vs. Committee for Scrutiny and Verification of Tribe Claims, on 8 November, 20th held that while dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents.

XIV. There is no contra evidence in the present case against the entries in the pre independence birth registers pertaining to the paternal side family members of the appellant which describe clearly that they all belong to "Mala" and Indian Christian. Minor variations in respect of the age differences between the persons as raised by the appellant cannot be a strong ground to reject the entries made in the birth /death registers of pre independent era.

XV. The SC in the reported case supra further held that 'Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinise the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim."

[Contd..on P.4]

XVI. The case of the appellant further is that a earlier circular was issued by the Joint Collector, East Godavari, Kakinada Vide Ref: C5 (M)/419/O9, dated 6.11.2010 to consider ST-Valmiki Certificates to the persons whose ancestors living in Agency area prior to 1956 and whose caste status was established as Valmiki in the local enquiries, even though the caste of a few members of his family were recorded as they are belonging to other castes. Infact the said executive circular has no legal footing.

XVII. It is relevant to cite here the decision of the Hon'ble High Court of Andhra Pradesh in Makireddy BangaruTalli And Anr. vs Collector Andors. on 3 September, 1991(1992 (1) ALT 441) which struck down a circular issued by the District Collector, the erstwhile East Godavari District, clarifying on earlier occasion on the similar lines that Malas or agency Malas or Valmikis, whose fore-fathers were bonafide residents of agency-tracts of East Godavari prior to 1924 and upto 6-9-1950 shall be considered and to be treated as Scheduled Tribes-Valmiki.

XVIII. Therefore the circular said to have been issued by the Joint Collector as claimed by the Appellant cannot be considered as legal and proper. The certificates issued to certain persons on the said circular cannot be a valid and legal ground to seek the community certificate as ST-Valmiki by the Appellant.

XIX. Even assume that the villagers told during the Gram Sabha held that the appellant was born in Timmapuram/Agency village that itself cannot be a legal ground to claim the Status as ST- Valmiki. The meeting conducted by the Tahsildar in the name of Gram Sabha cannot be legally construed as Gram Sabha under the provisions of AP Panchayats Extension to Scheduled Area(PESA) Rules 2011, which is empowered to deal certain specified subjects not the community status of an individual whether he/she is ST or not? Hence no specific emphasis is required to be given such meetings.

XX. A five judge Constitution bench of Hon'ble Supreme Court in the State of Maharashtra Vs Millind (AIR 2001 SC393), held that the Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it, The Valmiki is a notified ST in the agency areas of Andhra Pradesh but not Mala/ Indian Christian. Both the Valmiki and Mala or Mala/Christian cannot be considered as synonyms which is impermissible under law.

XXI. The appellant further argued that the caste of his nearest relative Kothapalli Appayamma was described as ST-Valmiki in the orders passed by the Special Deputy Collector, Tribal Welfare, Rampachodavaram and District Collector in a case in LTRP No. 55/1990 andits related Appeal in CMA No. 62/1991.

XXII. The AP Scheduled Area Land Transfer Regulations 1 of 59 as amended by 1 of 70 empowers the designated authorities to check the illegal transfer of lands in the scheduled area not to determine the community status of an individual either he/she belongs to ST or not. The scope of the enquiry is limited to verify whether any transfer of land effected between a tribal to nontribal or among the non tribals in the scheduled area. Therefore the caste of the nearest relative of the Appellant which was shown in the order passed by the Special Deputy Collector (TW) or District Collector cannot stand as a proof to the community status of the Appellant as ST- Valmiki at any rate.

XXIII. It is true that tribals can profess any religion. Their community status will remain as ST as argued by the Appellant. Admittedly the appellant is not an ordinary resident of Timmapuram (v)but residing in plain area (not agency area). Therefore the agency area is not a traditional habitat for the appellant.

XXIV. Though the social affinity test is a not a litmus test to prove the community status of the individual claimant, but it will help to corroborate other material evidence on record. There is no evidence on record to show that the appellant has social affinity with other ST- Valmiki communities in the agency area in support of his claim. The social affinity test gains an importance in the facts and circumstances of the present case, because as per the Presidential Order, Valmiki in the agency area is only required to be considered. as ST for the purpose of constitution.

XXV. The appellant further contended that the District Valmiki Sangham also declared him as Valmiki (ST). The District Valmiki Sangham is not a statutory body to determine the community status of the claimant as ST-Valmiki or declare he belongs to ST-Valmiki. He further contended that the caste of his sister namely KothapalliGeetha @ Gladys was declared by the District Collector, East Godavari District, Kakinada as ST-Valmiki.

XXVI. It is true that the proceedings were issued by the same District Collector in Ref.C5(M)/72O/2008 dated 19-07-2016 declaring the caste of his sister as ST- Valmiki, after deciding the caste status of the appellant here in as non ST-MALA CHRISTIANBC@ on 05-03-2016. But, the Government in G.O.Ms.No.02, T.W.(CV) Dept., dt.04.01.2024 have set aside the said impugned proceedings of the District Collector, in an Appeal filed by Sri E. Anjaneyulu, APST Employees Association, President and Sri R. Maheswara Rao under section 7 (2) of the Andhra Pradesh (SC, ST & BC) Regulation Act, 1993 and Rules 1997, challenging the same Vide File No.333218/CV.2/2016. Therefore the Appellant here in cannot take shelter under such order which is not in force.

XXVII. The certificate obtained as ST-Valmiki by the appellant shall not stand itself as a proof to his claim. The appellant has to prove the contents there in are true by adducing legal evidence to that effect. The Supreme Court in Kumari Madhuri Patil & Anr. Vs. Addl. Commissioner, Tribal Development & Ors case took a note of the fact that the benefit of reservation of seats in educational institutions, and other appointments were being denied to the genuine tribals on the basis of false caste certificates. Terming such caste claims as "pseudo status", and further the supreme court observed that spurious tribes had become a threat to the genuine tribals.

5. After examination of records/written arguments/ rulings of higher courts and discussions made, the Appellate Authority opinion that there is no irregularity or illegality in cancelling the community certificate issued to the Appellant herein as ST-Valmiki. Hence the impugned order passed vide reference in C5(M)/160/2014 dated 05-03-2016 by the District Collector, ASR District erstwhile East Godavari District, Kakinada cancelling the community certificate dated 27.08.1985 issued by the then M.R.O., Addateegala, to him as ST-Valmiki, while declaring his caste belongs to Mala- Christian- Backward Class-C, is hereby upheld.

6. Government after careful examination of the appeal petition and the circumstances stated supra and in exercise of the powers conferred under Section 7(2) of A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made there under, decide that the appeal petition filed by Sri Kothaplli Vivekananda Kumar S/o Kothappli Jacob, does not deserve any interference. Hence, the proceedings of the Collector & District Magistrate, East Godavari District, Kakinada are hereby upheld and the appeal petition filed by Sri Kothaplli Vivekananda Kumar S/o Kothappli Jacob, is hereby dismissed. The certificate issued by the then Tahsildar, Addateegala, deemed to be cancelled. As a sequel interim orders if any passed in the matter shall stand vacated. Appeal is disposed of accordingly.

7. The Collector & District Magistrate, Alluri Sitarama Raju District erstwhile East Godavari District is directed to take necessary consequential action in the matter, as per the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made therein.

8. The records (Rc.C5(M)/160/2014, containing NF.35 pages & CF 1-428) received from the Collector & District Magistrate, East Godavari District, Kakinada are returned herewith in original to the Collector & District Magistrate, ASR District erstwhile East Godavari District, Kakinada and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Collector & District Magistrate, Alluri Sitarama Raju District, Paderu. (we)
(With original Records) **(BY RPAD)**
The Collector & District Magistrate, East Godavari District, Rajamahendravaram.

[Contd..on P.6]

Sri Kothapalli Vivekananda Kumar,
S/o Kothapalli Jacob, Thimmapuram Village, R/o Thimmapuram Village,
Addateegala Mandal, East Godavari District-533428. (By RP)

Sri K. Mahesh,
Sri D. Karunakar Raju, Advocates,
Rajahmundry, East Godavari District.

Sri P. Venkata Ramana, Secretary,
A.P. ST Employees Association,
O/o. 12-13-1249,
Tarnaka, Secunderabad.

Copy to:

The Chief Regional Manager,
United India Insurance Company Limited,
Regional Office, "Pavan Enclave"
30-15-153, Dabagardens,
Post Box No.2008, Visakhapatnam- 530020.

The OSD to Hon'ble Deputy CM(TW).
The PS to Principal Secretary(TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER